

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0601

FILED

JAN 26 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

PHYLLIS A. JAMISON,

Plaintiff and Appellant,

v.

FRED VAN VALKENBURG, MISSOULA COUNTY
COMMISSION, BILL CAREY, COMMISSIONER,
JEAN CURTISS, COMMISSIONER, JAMES
MCCUBBIN, DEPUTY COUNTY ATTORNEY,
DENA L. LUND, JACK S. LUND, RICHARD B.
WHEATLEY, TAMBRY T. WHEATLEY,

Defendants and Appellees.

O R D E R

Defendants and Appellees Dena L. Lund and Jack S. Lund move to dismiss this appeal to the extent that it relates to the Fourth Judicial District Court's August 20, 2009, judgment dismissing the claims against them, on grounds that the notice of appeal was not timely filed as to that judgment. Plaintiff and Appellant Phyllis A. Jamison has filed a response in opposition to the Lunds' motion.

On appeal from a final judgment, we may review the final judgment and "all previous orders and rulings excepted or objected to which led to and resulted in the judgment." M. R. App. P. 6(1). The District Court's August 20, 2009, judgment is such a previous ruling, in which the District Court entered judgment in favor of some, but not all, defendants. Further, the District Court did not certify its August 20, 2009, judgment as final for purposes of appeal pursuant to M. R. Civ. P. 54(b), which provides:

When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of

decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

We have stated:

The Rule 54(b) certification requirement is not a mere formality but is a 'necessary and valuable tool for preventing piecemeal litigation and waste of the resources of both the litigants and the courts.' Therefore, the discretionary certification of a judgment as final, under Rule 54(b), requires a district court to follow the standards set forth in *Roy v. Niebauer* (1980), 188 Mont. 81, 87, 610 P.2d 1185, 1189 (listing five factors and three "guiding principles" that the court should consider in making a Rule 54(b) certification).

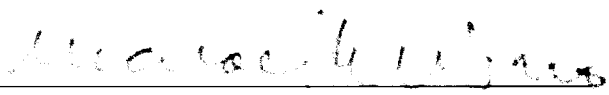
Trombley v. Mann, 2001 MT 154, ¶ 9, 306 Mont. 80, 30 P.3d 355 (internal citations omitted).

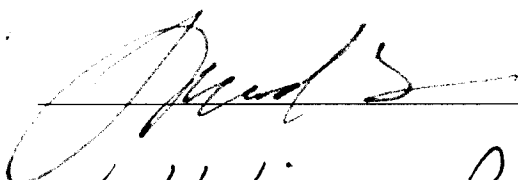
On September 9, 2009, the District Court entered judgment disposing of the claims against the remaining defendants in this matter. Jamison's November 7, 2009, notice of appeal was timely filed, as it was filed within 60 days after the District Court's entry of judgment after disposing of all claims against all defendants.

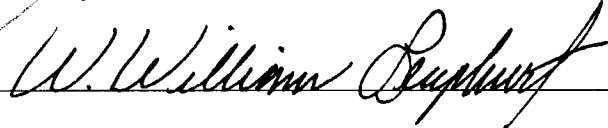
IT IS ORDERED that the motion to dismiss this appeal inasmuch as it relates to the Lunds is DENIED.

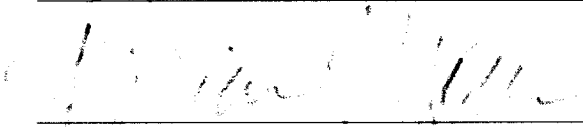
The Clerk is directed to provide copies of this Order to all counsel of record and to Phyllis Jamison personally.

DATED this 26th day of January, 2010.









Justices